

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>LADY LIBERTY TRANSPORTATION</b>	:	
<b>COMPANY, ET AL.,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiffs</b>	:	<b>NO. 05-1322</b>
	:	
<b>v.</b>	:	
	:	
<b>PHILADELPHIA PARKING AUTHORITY</b>	:	
<b>and JOSEPH EGAN, EXECUTIVE</b>	:	
<b>DIRECTOR,</b>	:	
<b>Defendants</b>	:	

**MEMORANDUM OPINION AND ORDER**

**RUFE, J.**

**February 2, 2006**

Plaintiffs are companies which provide “airport transfer” service to and from the Philadelphia International Airport using fourteen-passenger vans. Plaintiffs have traditionally been regulated by the Pennsylvania Public Utility Commission (“PPUC”), as common and/or contract “airport transfer” carriers.<sup>1</sup> A statute passed by the Pennsylvania legislature in 2004 gave the Defendant Philadelphia Parking Authority (“PPA”) regulatory authority over some airport transport operations previously regulated by the PPUC, including Plaintiffs’ operations. The PPA’s regulations were finalized in March 2005. The PPA will now regulate all airport transfer carriers designed to carry 14 or fewer passengers between the Philadelphia airport and other points in Philadelphia.<sup>2</sup>

Plaintiffs allege that the PPA’s regulations are much more onerous than the PPUC

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<sup>1</sup> 66 Pa. Cons. Stat. § 101 et seq.

<sup>2</sup> The PPA regulations do not apply to vehicles which carry fifteen or more passengers, or to motor carriers engaged in transportation between the Philadelphia airport and locations in other states, as regulation of those vehicles is pre-empted by federal law. (49 U.S.C. §14501 and §13501, respectively). Plaintiffs’ Complaint and Amended Complaint alleged that they should be federally regulated, as they carry fourteen passengers and a driver. However, Plaintiffs now concede that its shuttles are not part of the field Congress has occupied by statute. See Plaintiff’s Joint Memorandum of Law in Support of Motion for Preliminary Injunction and in Opposition to Defendant’s Motion to Dismiss [Docket # 15].

regulations, violate the dormant commerce clause of the Constitution, and will cause irreparable harm to Plaintiffs. The Amended Complaint also alleges: 1) preemption by federal statute 49 U.S.C. § 14501 (a) (a claim which Plaintiffs are no longer pursuing as noted in footnote two of this memorandum opinion); 2) violation of equal protection guaranteed by the Fourteenth Amendment; 3) violation of substantive due process guaranteed by the Fourteenth Amendment; 4) violation of the Pennsylvania Utility Law, 66 Pa. Cons. Stat. Ann. §101, which provides that the PPUC should be a comprehensive regulatory agency; and 5) violations of the Pennsylvania constitutional requirements for clear and open legislative action and uniform regulation. Accordingly, believing they are not properly subject to the regulations enacted by the PPA, Plaintiffs have filed a Motion for a Preliminary Injunction. The injunction sought, if granted, would require the PPUC to resume regulating Plaintiffs' operations pending the outcome of this lawsuit.<sup>3</sup>

The PPA argues that the statute and regulations are constitutionally valid, and that they will not cause irreparable harm to Plaintiffs, and asks the Court to deny the Motion for Preliminary Injunction. Furthermore, Defendant asks the Court to dismiss the federal claims for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) and the state claims for lack of supplemental jurisdiction under Rule 12(b)(1).<sup>4</sup>

The parties stipulate that, under the PPA regulations, Plaintiffs will be subject to the following requirements: 1) each year, a quarter of each fleet must undergo a heightened inspection by the PPA, at a cost of \$40 per vehicle, and such inspections are valid for at least 24 months; 2)

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<sup>3</sup>Acierno v. New Castle County, 40 F.3d 645, 647 (3d Cir. 1994).

<sup>4</sup> Defendants initially denied but now concede that the Plaintiffs' businesses affect interstate commerce, and therefore the dormant commerce clause applies, despite Congress's decision to leave regulations of this particular field to state and local governments. See Transcript of Hearing, November 21, 2005, at 11. Nevertheless, they ask the Court to dismiss the commerce clause count and all other counts alleged in the Amended Complaint.

drivers are required to be individually certified by the PPA, at a cost of \$50 per year, to ensure that the driver is licensed, has been trained and tested, knows the local roads and routes, speaks English, and passes a criminal background check; 3) Plaintiffs must pay a \$200 per vehicle fee annually; and 4) they must replace vehicles after 7 years or 350,000 miles, whichever occurs first; and 4) rate changes must be approved by the PPA, rather than the PPUC.

## **Discussion**

### **A. Plaintiff's Motion for a Preliminary Injunction**

Plaintiffs ask the Court to find that they are not subject to regulation by Defendants, but should continue to be subject to regulation by the PPUC. They ask for a preliminary injunction to preclude the PPA from implementing the new regulations. Plaintiffs allege that the proposed regulations would be financially ruinous for the airport transportation industry in Philadelphia because of the fees, maintenance requirements, and replacement schedule.

To obtain a preliminary injunction, the Plaintiffs must show that 1) they have a reasonable probability of success on the merits; and 2) that they will suffer an irreparable injury if relief is not granted to prevent a change in the status quo.<sup>5</sup> The Court may also consider the possibility of harm to other interested persons, if the Motion is granted or denied, and the public interest.<sup>6</sup> Demonstrating economic injury, however substantial, is not sufficient to establish irreparable harm. “Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of

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<sup>5</sup>Acierno, 40 F.3d at 653.

<sup>6</sup> Id.

litigation, weighs heavily against a claim of irreparable harm.”<sup>7</sup>

The PPA argues that Plaintiffs cannot demonstrate a high probability of success on the merits, as the PPA is entitled to judgment as a matter of law on its Motion to Dismiss. The Court agrees that PPA is entitled to judgment as a matter of law on Counts II, III, and IV, as will be discussed in detail below. As to Counts I, V, and VI, the Court need not reach the issue of whether Plaintiffs have demonstrated a high probability of success on the merits, as it finds that Plaintiffs have failed to prove immediate and irreparable harm in the absence of the injunction.

The PPA argues that the Complaint fails to set forth any facts justifying a conclusion that Plaintiffs will suffer immediate and irreparable harm in the absence of a TRO and preliminary injunction. Specifically, they argue that the Court must examine the competing interests of the parties, and determine whether the public interest in the implementation of the regulations is a more important concern than any alleged economic loss that will occur. Defendant argues that Plaintiffs will only suffer measurable economic losses if any, and furthermore, any financial losses will be minor.<sup>8</sup> In contrast, the legislature has entrusted the PPA with the regulation of Plaintiffs’ operations, and the public is depending upon the PPA to do so.

The Court finds that the alleged injury to Plaintiffs is purely economic in nature, and

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<sup>7</sup> Id. (“Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.”)

<sup>8</sup> Defendant also argues that the Burford abstention doctrine applies to this matter. Burford v. Sun Oil Co., 319 U.S. 315, 333-34 (1943). Burford suggests that in some cases, it is proper for a federal court sitting in equity to exercise its discretion to decline to exercise its jurisdiction over a case in the interest of the general welfare. “It is particularly desirable to decline to exercise equity jurisdiction when the result is to permit a State court to have an opportunity to determine questions of State law which may prevent the necessity of decision on a constitutional question.” In other words, Burford suggests that in some instances a federal court may wish to allow the state courts to first interpret and consider the constitutionality of any state statute or regulation. Having decided that an injunction is not appropriate in this case, the Court need not reach this issue.

can be calculated and recovered through legal remedies at trial. In contrast, the public has an interest in implementation of the regulations and the ongoing regulation of the airport limousine industry by the PPA, based on the legislative finding that the PPA could better regulate the industry than the PPUC. The Court concludes that Plaintiffs will not suffer an immediate and irreparable injury in the absence of an injunction. Therefore, Plaintiffs' Motion for Preliminary Injunction must be denied.

**B. Defendant's Motion to Dismiss**

Defendant has filed a Motion to Dismiss and a brief in support of the Motion. The PPA discusses the claims in three parts: 1) statutory preemption claims (Count II); 2) constitutional claims (Counts I, III, and IV); and 3) state law claims (Counts V and VI).

Rule 12(b)(6) provides that the Court may dismiss a complaint that "fails to state a claim upon which relief may be granted."<sup>9</sup> The Court must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.<sup>10</sup> The Court need not credit bald assertions or legal conclusions, however.<sup>11</sup> "The issue is not whether a plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support his claims."<sup>12</sup> If all federal claims are dismissed, the Court may dismiss the state law claims for lack of supplemental jurisdiction under Rule 12(b)(1).

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<sup>9</sup> Fed. R. Civ. P. 12(b)(6).

<sup>10</sup> Estate of Bailey by Oare v. York County, 768 F.2d 503, 506 (3d Cir. 1985).

<sup>11</sup> In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1429-30 (3d Cir. 1997).

<sup>12</sup> Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

1. Statutory claims: Count II

Plaintiffs' Amended Complaint argues that federal law preempts the PPA's authority to regulate Plaintiffs operations because their motor carriers are engaged in interstate commerce and subject to 49 U.S.C. § 14501. However, Plaintiffs now concede that there is no federal preemption affecting the vehicles in question, as they operate wholly intrastate and carry fewer than 15 passengers.<sup>13</sup> Therefore, the Court will dismiss Count II with prejudice.

2. Constitutional Claims

a. Count I: Dormant Commerce Clause

Plaintiffs do not allege that Defendant's regulations discriminate against interstate commerce. Instead, Plaintiffs assert that this case is controlled by the dormant commerce clause.<sup>14</sup> Since there is no discrimination against out-of-state interests, the Court must next apply a balancing test. The Court must uphold the statute and regulations unless the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefit.<sup>15</sup>

Defendant argues that Plaintiff's Amended Complaint fails to state a claim under the dormant commerce clause, because the burden on Plaintiffs is not excessive.<sup>16</sup> Defendant cites a

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<sup>13</sup> See Plaintiff's Memorandum of Law in Support of Motion for Preliminary Injunction and in Opposition to Defendant's Motion to Dismiss [Docket # 15].

<sup>14</sup> United States v. Lopez, 514 U.S. 549, 579-80 (1995).

<sup>15</sup> Harvey & Harvey, Inc. v. City of Chester, 68 F.3d 788, 797 (3d Cir. 1995).

<sup>16</sup> Initially Defendant took the position that Plaintiffs were not engaged in interstate commerce. See Defendant's Motion to Dismiss [Doc. #4]. They now concede that Plaintiffs' transportation of passengers on an intrastate leg of an interstate journey through pre-paid arrangements affects interstate commerce. See Transcript of Hearing, November 21, 2005, at 11. The Court agrees that Plaintiffs are engaged in interstate commerce, and that the dormant commerce clause applies to regulations of their activities. See, United States v. Yellow Cab Co., 332 U.S. 218 (1947); Central Freight Lines v. I.I.C., 899 F.2d 413 (5th Cir. 1990); Charter Limousine Co. v. Dade

recent United States Supreme Court case which upheld a \$100 per vehicle annual fee imposed on trucks engaged in intrastate hauling in Michigan, finding it did not violate the dormant Commerce Clause.<sup>17</sup>

While that holding may be instructive at a later point in this litigation, Plaintiffs' Amended Complaint does allege that the burden imposed on interstate commerce is excessive in relation to the local benefit. As such, Plaintiffs have stated a claim which is sufficient to survive Defendant's Motion to Dismiss on this count.

b. Equal Protection and Due Process Claims (Counts III and IV)

Plaintiffs claim that Defendant's regulations treat them unfairly as compared to other similar vehicles, without rational basis. They also claim that the regulations deprive them of their license and vehicle value for improper motives. Defendant argues that these claims fail when there is any rational basis for the state or locality's economic regulation of the business in question, since Plaintiffs are not members of a protected class.

As to the Equal Protection Claim, the PPA has a compelling interest in ensuring the safety of airport transportation vehicles, as these vehicles serve the public and the state legislature has entrusted them with regulation of these vehicles. The PPA treats Plaintiffs' vehicles differently from larger vehicles (those carrying 15 or more passengers) and those engaging in transportation of passengers across state lines because such a distinction is *required by federal law*.<sup>18</sup> Therefore,

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County Bd. of County Comm'rs, 678 F.2d 586 (5th Cir. 1982); Executive Town and Country Srvs. v. City of Atlanta, 789 F.2d 1523 (11th Cir. 1986).

<sup>17</sup> Am. Trucking Ass'ns, Inc. v. Michigan Pub. Serv. Comm'n, 125 S.Ct. 2419 (2005).

<sup>18</sup> 49 U.S.C. §14501; 49 U.S.C. §13501.

Plaintiffs' equal protection claim must fail as a matter of law.

As to their due process claims, Plaintiffs have not alleged any facts suggesting that the statute and regulations were not properly enacted as required by the state legislative and regulatory processes and procedures. Furthermore, all of the regulations purport to have a rational basis (i.e. to improve the quality of airport transportation and promote tourism and public safety). Therefore, Count IV fails as a matter of law.

3. State Law Claims: Counts V and VI

Count V of the Amended Complaint alleges violations of the Pennsylvania Public Utility Code.<sup>19</sup> Specifically, Plaintiffs allege that the Public Utility Code preempts any authority the PPA has to regulate their operations. Count VI of the Amended Complaint alleges that purported transfer of power to the PPA is a violation of legislative requirements for clear and open legislative action, and constitutes non-uniform legislation in violation of the state constitution. Defendant asks the Court to dismiss these claims pursuant to Rule 12(b)(1) if the Court dismisses each of the federal law claims. Defendant sets forth no other basis for dismissing Counts V and VI. Therefore, since the Court has denied Defendant's Motion to Dismiss Count I, a federal Constitutional claim, it will also deny the Motion to Dismiss as to Counts V and VI.

An appropriate Order follows.

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<sup>19</sup> 66 Pa. Cons. Stat. Ann. §101 et seq.



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**CIVIL ACTION NO. 05-1322**

**ORDER**

**AND NOW**, this 31<sup>st</sup> of January, 2006, upon review of Plaintiff's Motion for a Preliminary Injunction [Doc. # 5] and all responses and replies thereto, and Defendant's Motion to Dismiss [Doc. # 4] and all responses and replies thereto, and having heard oral argument on the motions, and for the reasons set forth in the attached Memorandum Opinion, the Court hereby **ORDERS** as follows.

1. Plaintiff's Motion for a Preliminary Injunction is **DENIED**.
2. Defendant's Motion to Dismiss is **GRANTED** in part and **DENIED** in part:
  - A. Count II of Plaintiff's Complaint is **DISMISSED** with prejudice.
  - B. Counts III and IV of Plaintiff's Complaint are **DISMISSED** without prejudice. Plaintiff may amend the Complaint as to Counts III and IV within ten (10) days of the date of this Order.
  - C. Defendant's Motion is **DENIED** as to Counts I, V, and VI.

It is so **ORDERED**.

**BY THE COURT:**

**/S/ Cynthia M. Rufe**

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**CYNTHIA M. RUFÉ, J.**